

## **ENVIRONMENTAL REVIEW TRIBUNAL**

**IN THE MATTER OF** section 53(1) of the Ontario Water Resources Act, as amended, and sections 38 to 47 of the Environmental Bill of Rights, 1993, as amended

**IN THE MATTER OF** an application for leave to appeal by Brennain Lloyd on behalf of Northwatch of a decision by the Director, Environmental Assessment and Approvals Branch, Ministry of Environment, to issue a Sewage Works Approval under s. 53(1) to Falconbridge Limited (Mines/Mill Division).

**AND IN THE MATTER OF** a Certificate of Approval No. 0472-5KLLR3 for a Sewage Works Approval issued to Falconbridge Limited (Mines/Mill Division) under section 53(1) of the Ontario Water Resources Act as amended

### **SUBMISSIONS OF BRENNAIN LLOYD ON BEHALF OF NORTHWATCH ON APPLICATION FOR LEAVE TO APPEAL**

**ENVIRONMENTAL REVIEW TRIBUNAL CASE NUMBER: 03-101  
MINISTRY INSTRUMENT REFERENCE: 1417-5JGRNM  
EBR REGISTRY NUMBER:IA03E0209**

#### **PART I - GENERAL**

1. This is an application by Brennain Lloyd, on behalf of Northwatch, seeking from the Environmental Review Tribunal :
  - (a) An order granting leave to appeal the decision of the Director to issue Certificate of Approval No. 0472-5KLLR3 for a Sewage Works Approval to Falconbridge Limited (Mines/Mill Division) section 53(1) of the Ontario Water Resources Act, as amended
  - (b) Any other Order that the Board deems appropriate.
2. It is respectfully submitted that the Director's decision to issue the Certificate of Approval (C of A) to Falconbridge Limited was unreasonable in accordance with section 41 of the Environmental Bill of Rights, 1993 (EBR) in that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made that decision; and the decision in respect of which an appeal is sought could result in significant harm to the environment.

## PART II - THE FACTS

### (a) Background

3. The Applicant, Brennain Lloyd, is seeking leave on behalf of Northwatch, and is a founding member of Northwatch and is currently Northwatch's coordinator and project manager. Northwatch was founded in 1988, and is a regional coalition of environmental and citizen organizations and individual members, operating throughout Northeastern Ontario. Northwatch has been actively involved in environmental issues of a regional nature including: waste management, water quality, mining, wilderness protection and land use. In addition to acting on these issues as a representative body, Northwatch provides support to local citizen's groups addressing these and other environmental issues of concern in their own communities. Over the past decade and a half, Northwatch has been actively involved in a number of mine-related concerns, including the following:
  - C Review and comment on the Aquarius Mine Project through a comprehensive study conducted under the federal Environmental Assessment Act
  - C Research, writing and production of several mining related documents, including a review of mining activities in the Lake Superior basin and an overview of mining issues and impacts in the boreal forest region of Canada, both published in 2001
  - C Extensive participation in the federal environmental assessment review and licensing processes related to the decommissioning of several uranium mines in the Elliot Lake region
  - C Production of a regular electronic news service on mining activities and developments in northern Ontario
  - C Review and comment on several mining projects in the development and / or closure stage in northern Ontario, including the Victor Project, Porcupine Joint Venture, Renabi Mine, Claude Rundle Mine, and others
  - C Review and comment on the closure plan, sewage works and land use strategy amendments related to the Montcalm Mine and its development

*TAB A, Northwatch: A Profile*

4. The Applicant has previously been granted standing by the Environmental Appeal Board while acting on behalf of Northwatch in a similar matter.

*TAB B, Decision of John Swaigen, Environmental Appeal Board, Northwatch vs Harbour Remediation, Reasons Released August 16, 1996*

5. The proponent, Falconbridge Limited Mines/Mill Division, intends to develop a copper nickel mine in Montcalm Township, 70 kilometres northwest of Timmins.

*TAB C, "Progress report of Falconbridge's Montcalm nickel project", Canada Newswire News Release by Falconbridge Limited, June 19<sup>th</sup>, 2003*

6. The proponent applied for a Certificate of Approval for a construction and operation of a mine water treatment system to treat groundwater pumped for mine dewatering and surface runoff associated with potentially acid generating waste rock stockpiles. The treatment system is to comprise: a mine dewatering pipeline, a slimes settling basin, a run-off interceptor/collection ditch system, a diversion ditch system, lime treatment plant, pH monitoring station for lime feed control, metal-hydroxide sludge settling pond, discharge control structure (including overflow weir, facilities for pH and flow monitoring) a CO<sub>2</sub> addition system for pH control, and a polishing pond.

*TAB D - EBR Registry Notice of the Proposal for an Instrument under OWRA s. 52(a) Approval for sewage works, Registry Number 1A03E209, proposal loaded February 14, 2003.*

7. The proponent had previously sought an approval for sewage works in 2002, and withdrew their application following the public comment period and reviews by the Ministries of the Environment and Natural Resources.

*TAB E - EBR Registry Notice of the Decision for an Instrument, Registry Number 1A02E0854, decision loaded January 29, 2003.*

8. Treated effluent will be discharged via a drainage-way to the Groundhog River, with contingency for a pumping system and buried pipeline. The mining effluent will include various contaminants, including copper, arsenic, cadmium, lead, nickel, zinc, total ammonia and un-ionized ammonia. Several of the contaminants are expected remain at levels that exceed the Provincial Water Quality Objectives at the time the mine effluent is discharged into the Groundhog River.

*TAB F - "Falconbridge Limited Montcalm Project - Mine Water Treatment Pond Expansion Permitting Support Document", AMEC Earth & Environmental Limited, January 2003, Sections 4 through 7*

9. The point of discharge for the buried pipeline is in proximity of a sturgeon spawning area in the Groundhog River. The discharge of the mine effluent at this location is acknowledged by the Ministry of the Environment as having the potential to adversely impact on the sturgeon population.

*TAB G - Letter from John Parks, Surface Water Evaluator, Ministry of the Environment, to Albert Koehl, Sierra Legal Defence Fund, dated September 3, 2003*

10. A Decision by the Director of the Minister of the Environment to issue an Approval under Section 53(1) of the Ontario Water Resources Act for the construction and operation of the sewage works and the subsequent discharge of mine effluent to the Groundhog River by buried pipeline was posted on the Environmental Bill of Rights registry of August 13, 2003.

*TAB H, EBR Registry Notice of the Decision to issue a Certificate of Approval to*

*Falconbridge dated 2003/08/13.*

*TAB I - Certificate of Approval for Industrial Sewage Works, Number 0472-5KLLR3, Issued to Falconbridge Limited - Kidd Mining Division and Dated July 17<sup>th</sup>, 2003.*

11. Brennain Lloyd, on behalf of Northwatch, is seeking leave to appeal the Decision of the director to issue the Certificate of Approval for sewage works to Falconbridge Limited Mines/Mill Division for sewage works at the Montcalm Mine property.

### **PART III - ISSUES AND THE LAW**

12. The Applicant submits that the issues arising from this application may be stated as follows:

**ISSUE #1: Is the Director's Decision Subject to Appeal under the EBR?**

**ISSUE # 2: Does the Applicant have an "Interest" in the Directors's Decision ?**

**ISSUE # 3: Is the Director's Decision "Unreasonable?"**

**ISSUE #4: Could the Director's Decision Result in Significant Environmental Harm ?**

13. For the reasons provided below the Applicant submits that each of the questions should be answered in the affirmative.

#### **Issue # 1- Is the Director's Decision Subject to Appeal under the EBR?**

14. The Director's decision to issue a C of A to Falconbridge is a Class II Instrument for the purposes of the EBR, pursuant to section 22 of the EBR and Section 5 (2) 6 of Ontario Regulation 681/94.

*TAB J, Environmental Bill of Rights, section 22 and section 5 (2) 6 of Ontario Regulation 681/94.*

15. The Director's decision to issue the C of A is subject to appeal under section 38 of the EBR because another person namely the proponent has the right of appeal under another Act, namely the Ontario Water Resources Act to appeal the decision.

*TAB K, Section 100, Ontario Water Resources Act.*

16. The EBR Registry Notice in relation to the Director's decision clearly confirms that the decision is subject to appeal.

*TAB H, EBR Registry Notice of the Decision to issue a Certificate of Approval to Falconbridge, dated 2003/08/13.*

## Issue # 2 - Does the Applicant have an "Interest" in the Director's Decision?

17. The Applicant, Brennain Lloyd on behalf of Northwatch, has had a lengthy history of involvement with the Director's decision to issue the C of A to Falconbridge Limited. The Applicant

*TABS A and L through Q*

18. The Applicant provided comments to the Ministry of the Environment in response to EBR Registry posting Number: IA02E0854, dated July 26, 2002 and providing notice of an application by Falconbridge Ltd for an Approval for sewage works under OWRA s. 53(1) Montcalm Project, Montcalm Township, District of Cochrane

*TAB L, Letter from Ms. Brennain Lloyd on behalf of Northwatch to Brad Ross, Application Processor Ministry of the Environment and Energy, Environmental Assessment and Approvals Branch dated August 25, 2002.*

19. The Applicant contacted the proponent, Falconbridge Ltd. prior to the August 25, 2002 deadline for comment and again following the closure of the comment period and made arrangements with Falconbridge to visit the site, accompanied by Falconbridge personnel, on September 24<sup>th</sup>, 2002.

*TAB M, Email from Sue Lendrum, Environmental Coordinator, Kidd Mining Division, Falconbridge Ltd., dated September 18<sup>th</sup>, 2002.*

20. The Applicant met with Falconbridge Ltd. for a second time, at the initiation of Falconbridge personnel, to discuss project developments in a meeting at the Kidd Mine, Timmins on December 16th, 2002.

*TAB N, Emails exchanged between Sue Lendrum, Environmental Coordinator, Kidd Mining Division, Falconbridge Ltd. and Brennain Lloyd on behalf of Northwatch, dated November 29<sup>th</sup> to December 2<sup>nd</sup> 2002.*

21. The Applicant provided comments to the Ministry of the Environment in response to EBR Registry posting Number: IA03E0209, dated February 14, 2003 which provided notice of an application by Falconbridge Ltd for an Approval for sewage works under OWRA s. 53(1) Montcalm Project, Montcalm Township, District of Cochrane

*TAB O, Letter from Ms. Brennain Lloyd on behalf of Northwatch to Brad Ross, Application Processor Ministry of the Environment and Energy, Environmental Assessment and Approvals Branch dated March 16, 2003.*

22. The Applicant provided comments to the Ministry of Northern Development and Mines in response to EBR Registry posting Number: ID03E1002, dated February 25, 2003 which

provided notice of an application by Falconbridge Ltd for an instrument under the Mining Act s.141(3)(a) - "Director acknowledges receipt of a closure plan for (re)commencing mine production" for the Montcalm Project, Montcalm Township, District of Cochrane

*TAB P, Letter from Ms. Brennain Lloyd on behalf of Northwatch to Robert Ferguson, Mineral Development Consultant, Mines Group, Ministry of Northern Development and Mines, dated March 27, 2003.*

23. The Applicant provided comments to the Ministry of Natural Resources in response to EBR Registry posting Number: PB03E2002, dated April 25, 2003 which provided notice of a proposed amendment to the land use strategy and the boundary to the Recommended Groundhog River Provincial Park.

*TAB Q, Letter from Ms. Brennain Lloyd on behalf of Northwatch to Mike Bernier, Information Management Supervisor, Chapleau District Office of the Ministry of Natural Resources, dated May 24, 2003*

24. For the foregoing reasons, the Applicant submits she has an "interest" in the Director's decision within the meaning of subsection 38(1) and (3) of the EBR.

### **Issue # 3 - Is the Director's decision to Issue the Certificate to Take Water Unreasonable?**

#### **(a) The Test of reasonableness under section 41 of the EBR.**

25. With respect to "reasonableness" of the Director's decision, section 41 of the EBR states:

Leave to Appeal a decision shall not be granted unless it appears to the appellate body that,

- (a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and
- (b) the decision in respect of which an appeal is sought could result in significant harm to the environment.

*TAB I, Environmental Bill of Rights, S.O 1993 , section 41.*

26. The standard of proof a leave applicant must meet is to show that there is good reason to believe that the Director's decision is unreasonable and it appears that the decision could

result in significant harm. It is not necessary for the Board to determine at the leave stage whether the Director was actually unreasonable or the likelihood of potential harm materializing . These questions may be left to be determined at the appeal stage.

*TAB R, Residents Against Company Pollution Inc., RE 20 C.E.L.R (N.S.) 97 (Ont. Env. App. Bd) at p. 114.*

27. The Applicant submits the Director's decision to issue the C of A to Falconbridge Ltd. is "unreasonable" within the meaning of section 41 of the EBR as outlined paragraph 19 through to 36 and furthermore "significant harm" could result as outlined in paragraphs 37 through to 49.

**(b) Is the Director's Decision Unreasonable in Light of the Relevant Law and Government Policies?**

28. Section 53(1) of the Ontario Water Resources Act (OWRA) gives the Director authority to issue a Certificate of Approval for sewage works.
29. The goal of Ontario's Water Management Policies and Guidelines is to “ensure that the water quality is satisfactory for aquatic life and recreation and that water uses which require more stringent water quality be protected on a site specific basis. The Provincial Water Quality Objectives (PWQO's) will protect aquatic life ....” The wilful impairment of the surface water quality of the Groundhog River, such as would be the outcome of Falconbridge operating their sewage works in accordance with their described operations and the related certificate of approval, would be inconsistent with the Water Management Policies and Guidelines, in particular as described in the Preamble and referenced above and as set out in Section 1.4. in general, and the discussion of Pollution Prevention in Section 1.4.(a).

*TAB S, Water Management Policies and Guidelines, Preamble and Section 1.4.*

30. The general provisions of the Ontario Water Resource Act prohibit - by means of declaring it an offence - “the discharge of any material that may impair the quality of the water of any water or watercourse”. The wilful impairment of the surface water quality of the Groundhog River, such as would be the outcome of Falconbridge operating their sewage works in accordance with their described operations and the related certificate of approval, would be inconsistent with this provision.

*TAB J, Ontario Water Resources Act, Section 20(1).*

31. The Environmental Protection Act (EPA) defines natural environment widely to include: "air, land, water" in the Province of Ontario.

*TAB T, Environmental Protection Act, Chapter E.19, R..S.O. 1990. E -14 as*

*amended, section 1.*

32. The purpose of the Environmental Protection Act is to provide for the protection and conservation of the natural environment. The wilful impairment of the surface water quality of the Groundhog River, such as would be the outcome of Falconbridge operating their sewage works in accordance with their described operations and the related certificate of approval, would be inconsistent with this purpose.

*TAB T, Environmental Protection Act, Chapter E. 19 R.S.O. 1990 as amended, section 3.*

33. The purpose of the EBR is to protect, conserve and where reasonable restore the integrity of the environment to provide for the sustainability of the environment and to protect the right to a healthful environment.

*TAB I, Environmental Bill of Rights, 1993 section 2(1)(c).*

34. It is respectfully submitted that the Director should have regard to the above environmental statutes when issuing a C of A. In particular, the Director has a duty to protect the natural environment and the public interest when deciding whether or not to issue a C of A.
35. It is respectfully submitted that the Director's decision to issue the C of A is unreasonable as the Director knew or ought to have known that the issuance of the C of A would be contrary to the MoE's policies and laws.

#### **Issue # 4 Could the Director's Decision Result in Significant Environmental Harm ?**

36. The EBR defines harm as follows:

Harm means any contamination or degradation and includes harm caused by the release of any solid, liquid, gas, odour, heat, sound, vibration or radiation.

*TAB I, Section 1, Environmental Bill of Rights, 1993*

37. The word "significant" is not defined in the EBR. The Environmental Appeal Board has stated that because of the inherent subjectivity of the concept of "significant harm" the Board should attempt to set a test which does not rely on the individual views of its members as to what may be significant. Where possible, significant should be determined by reference to scientific principles and evidence of legal criteria

*TAB R, Residents Against Co. Pollution Inc, Re 20 C.E.L.R. (N.S) 97 (Ont. Env. Appeal Board). at p. 112.*

38. As evidenced in the documentation provided the proponent and outlined in Northwatch's submissions to the Ministry of the Environment, Ministry of Natural Resources and Ministry of Northern Development and Mines in commenting on the applications for sewage works, alterations to the land use plan and filing of the closure plan, respectively, there will be numerous adverse effects on the environment which could - singly and cumulatively - result in significant harm to the environment. The potential for this harm is acknowledged by the Ministry of the Environment in that Ministry's commentary included in the EBR posting of the Notice of the Decision for an Instrument (OWRA s. 53(1) - Approval for sewage works) and is indicated in a number of the documents provided by the proponent and their consultants.

*TAB E - EBR Registry Notice of the Decision for an Instrument, Registry Number 1A02E0854, decision loaded January 29, 2003.*

39. The harm to the environment will include but not be limited to harm to the aquatic environment as a result of the discharge of deleterious substances in the form of mine effluent; this mine effluent may be made more toxic as a result of acid mine drainage and related metal leaching, which may be generated at levels higher than those currently being estimated by the proponent and their consultants.
40. Falconbridge Limited has argued that they should be allowed to use the Groundhog River as a mixing zone for their contaminated effluent. This does not mean that significant harm will be avoided or prevented; it means that the level of harm will simply be dissipated. This reliance on dilution is in contravention of Ontario and Canada's environmental policies and regulation.
41. There are available treatment approaches and technologies which could be added to the effluent treatment system being proposed that would result in greatly effluent quality.

*TAB U - Statement by Dr. Dave Chambers, Center for Science in Public Participation, dated September 13<sup>th</sup>, 2003.*

42. The Ministry of the Environment, while seeming to have accepted this dilution-is-the-solution approach - as evidenced by their having approved the application - makes clear in their commentary on the EBR posting that the approval relies on the dilution of the effluent by a factor of one thousand and that even with that dilution it is, at best "*unlikely that there are will be any meaningful adverse effects on the aquatic communities in the receiver*". MOE further states that "*given the sensitivity of methods currently utilized to detect aquatic effects, as required by the province, it is unlikely that any effects will, in fact, be measured in the fisheries and benthic invertebrate communities*". We take this to be an acknowledgment by the Ministry of the Environment of the current limits on the current method's ability to adequately detect aquatic effects. However, an inability to

detect effects does not mean that the effects are not occurring or that they are not significant, ie. the absence of evidence is not the evidence of absence.

*TAB E - EBR Registry Notice of the Decision for an Instrument, Registry Numer IA02E0854, decision loaded January 29, 2003.*

43. The Ministry of the Environment, in fact, acknowledges that there are likely to be adverse affects on the Groundhog River, and states in the Notice of Decision that “*Where the discharge enters the Groundhog River, there will be a small area where biota may be impacted*” . MOE seeks to qualify this statement by noting that “*Mixing models show that this area is less than 15% of the river width at maximum and less than 100 metres in length where (for example) concentrations of copper dilute down to levels of approximately 0.015 mg/l during low flow periods*” . The Ministry also acknowledges that a dispersion plume would be created, and increases in copper concentrations would be experience for a portion of the river. This is a significant environmental harm, and its grounds for this Application being quashed at best, and referred to an Appeal Hearing at minimum.

*TAB H, EBR Registry Notice of the Decision to issue a Certificate of Approval to Falconbridge dated 2003/08/13.*

44. The levels of contamination estimated by the proponent and accepted by the Ministry of the Environment could be an underestimation, in that the background values used for copper and nickel were based on a limited and dated data set.

*TAB V - Letter of Opinion from Amy Crook, Water Quality Director, Center for Science in Public Participation, dated September 13, 2003.*

46. The proponent took a non-conservative approach in their calculation of lead, zinc and arsenic concentrations by assuming that soil concentrations of these metals equates to their concentration in receiving waters, when there is no direct correlation between concentrations of metals in soils and surrounding water bodies. This assumption introduces more uncertainty and again could underestimate the existing metal load in the receiving waters.

*TAB V - Letter of Opinion from Amy Crook, Water Quality Director, Center for Science in Public Participation, dated September 13, 2003.*

46. Uncertainty in effluent quality projections was introduced by using information from other mine sites, and allowing for additional dilution from higher than average mine water flows as the treatment method to reach standards.

*TAB V - Letter of Opinion from Amy Crook, Water Quality Director, Center for Science in Public Participation, dated September 13, 2003.*

47. The proposed pipeline will enter the river immediately upstream of a sturgeon spawning ground. Lake Sturgeon is listed as globally vulnerable and provincially rare to uncommon, and the Groundhog River has been identified as an area of high conservation value because of occurrences of Lake Sturgeon.

*TAB W - Profile and status summaries for Lake Sturgeon.*

48. The Ministry of Natural Resources has reviewed the proposal, and has identified a number of concerns related to the various options put forward by the proponent and reviewed by the Ministry of the Environment. In particular, the Ministry of Natural Resources has identified concerns with respect to the fishery resource. This concern applies to the variety of species that utilize the River and to a variety of flow conditions, but has been expressed in particular with respect to the buried pipeline option and the subsequent release of effluent at Six Mile Rapids under low flow conditions and as this release would affect the Lake Sturgeon.

*TAB X - Internal MNR emails accessed through a Freedom of Information Request by the Federation of Ontario Naturalists, including emails dated March 12, 2003 and April 14<sup>th</sup> 2003 from Charles Hendry to Mike Bernier*

49. A primary concern with this site is with respect to the anticipated high level of acid generation and related mobilization of metals, and their subsequent adverse effects, particularly on the aquatic environment, fish and fish habitat. While Falconbridge and the Company's consultants agree that the ore will be acid generating, they are predicting that the rock surrounding the ore will not be acid generating. This waste rock will be brought to surface in large volumes, and while Falconbridge's consultants have concluded that the majority of the waste rock will consist of low-sulphide, non- acid generating material, any potential for it to "go acid" could have long term environmental impacts.

*TAB F - "Falconbridge Limited Montcalm Project - Mine Water Treatment Pond Expansion Permitting Support Document", AMEC Earth & Environmental Limited, January 2003, Sections 4 through 7*

50. Acid mine generation, or acid mine drainage, leaches metals and chemicals from the rock, and makes the mine effluent more polluting.

*TAB Y - Technical Document - Acid Mine Drainage Prediction, U.S. Environmental, Protection Agency, Office of Solid Waste, Special Waste Branch, December 1994, Section One*

51. Figure 5-2 in the Closure Plan shows that the minimum number of samples from the massive sulphide ore were not collected, but offers no explanation of why not, other than to acknowledge that it is acid generating; the required number of tests should be completed and results provided.

*TAB Z - Montcalm Project Closure Plan, AMEC Earth & Environmental Limited, July 2002*

52. The proponent's stated intention to rely on visual identification of potentially acid generating material during operations (as discussed in Section 5.2.5 of the Closure Plan) can or will be a consistent and effective approach for the identification and subsequent segregation of acid generating material. Further, the waste rock handling procedure referred to as "being developed" should be outlined in the closure plan, in detail, and it is not.

*TAB Z - Montcalm Project Closure Plan, AMEC Earth & Environmental Limited, July 2002, Sections 5.1 and 5.2*

53. It is not clear from the permitting support document's description of sludge management (2003 Permitting Support Document, Page 39, Section 4.6) how or if the management approach will prevent the sludge from mixing with acidic materials, including acidic water; this is a key concern, given that the sludge coming into contact with acidic material, including acidic water, will mobilize the metals back into solution; this has implications for closure and the post closure period

*TAB F - "Falconbridge Limited Montcalm Project - Mine Water Treatment Pond Expansion Permitting Support Document", AMEC Earth & Environmental Limited, January 2003, Sections 4 through 7*

54. The Ministry of the Environment has responded to these concerns by summarizing information presented by the proponent in the Permitting Support Document and Closure Plan, both of which have been reviewed by Northwatch. MOE indicates that "*the dominant portion of the waste rock that would be generated at Montcalm (i.e., the low sulphide gabbros) is not potentially acid generating*", but that has never been at issue. What is at issue is the adequacy of the evaluations done by the proponent and their consultants and the reliability of their conclusions. Also at issue is the level of acid generating potential at the interface between the host rock and the deposit; this interface has had only minimal evaluation.

*TAB H, EBR Registry Notice of the Decision to issue a Certificate of Approval to Falconbridge dated 2003/08/13.*

55. Falconbridge's rationale for applying for a certificate of approval prior to having selected their discharge route (ie. the effluent ditch or the buried pipe) is that in doing so they will avoid having to reapply at some future date if the "preferred" option of the mine effluent ditch through a provincial park is not approved. This is a flawed rationale in that a) the application is premature, in that the Company is not yet able to clearly describe the project, its anticipated environmental impacts and proposed mitigating measures, in that they have not yet completed fundamental aspects of the project design; and b) the Company contends that "all other aspects of the treatment works would remain the same, and the receiving water (ie the Groundhog River) would remain the same", but fails to

discuss how the effluent quality would potentially be different at the point of discharge into the Groundhog River, given very different environmental conditions and potentially very different residency times

*TAB F - "Falconbridge Limited Montcalm Project - Mine Water Treatment Pond Expansion Permitting Support Document", AMEC Earth & Environmental Limited, January 2003, Sections 4 through 7, page 47, paragraph 1*

56. Falconbridge's 2003 application puts forward two options, but failed to make the case for either, and in particular fails to make the case for the proposed pipeline, ie. the option which the Ministry of the Environment approved.

**PART IV - ORDER REQUESTED**

57. For the foregoing reasons, the Applicant respectfully requests:

(a) An order granting leave to appeal the decision of the Director, Section 53 of the Ontario Water Resources Act, Ministry of Environment dated July 17th, 2003, to grant a Certificate of Approval No. 0472-5KLLR3 for a Sewage Works Approval issued to Falconbridge Limited (Mines/Mill Division); and

(b) Any other Order that the Board deems appropriate.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

September 14, 2003

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Brennain Lloyd, on behalf of Northwatch

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AND TO: Marc Kemerer, Legal Services Branch  
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AND TO: Falconbridge Ltd.  
Attention: Doug Hamilton, Solicitor  
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Tel 416 864 7274 Fax 416 362 9680

AND TO: The Environmental Commissioner of Ontario  
Attention: Mr. Gord Miller, Environmental Commissioner  
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**LIST OF DOCUMENTS IN SUPPORT OF**  
**SUBMISSIONS OF BRENNAIN LLOYD ON BEHALF OF NORTHWATCH**  
**ON APPLICATION FOR LEAVE TO APPEAL**

**ENVIRONMENTAL REVIEW TRIBUNAL CASE NUMBER: 03-101**  
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DOCUMENT LIST

- TAB A Northwatch: A Profile
- TAB B Decision of John Swaigen, Environmental Appeal Board, Northwatch vs Harbour Remediation, Reasons Released August 16, 1996
- TAB C Progress report of Falconbridge's Montcalm nickel project, Canada Newswire News Release by Falconbridge Limited, June 19<sup>th</sup>, 2003
- TAB D EBR Registry Notice of the Proposal for an Instrument under OWRA s. 52(a) Approval for sewage works, Registry Number 1A03E209, proposal loaded February 14, 2003.
- TAB E EBR Registry Notice of the Decision for an Instrument, Registry Numer 1A02E0854, decision loaded January 29, 2003.
- TAB F "Falconbridge Limited Montcalm Project - Mine Water Treatment Pond Expansion Permitting Support Document", AMEC Earth & Environmental Limited, January 2003, Sections 4 through 7
- TAB G Letter from John Parks, Surface Water Evaluator, Ministry of the Environment, to Albert Koehl, Sierra Legal Defence Fund, dated September 3, 2003
- TAB H EBR Registry Notice of the Decision to issue a Certificate of Approval to Falconbridge dated 2003/08/13.
- TAB I Certificate of Approval for Industrial Sewage Works, Number 0472-5KLLR3, Issued to Falconbridge Limited - Kidd Mining Division and Dated July 17<sup>th</sup>, 2003.
- TAB J Environmental Bill of Rights, sections 1, 2(1)(c), 5(2)6 and 22 and of Ontario Regulation 681/94.
- TAB K Section 20(1) and 100, Ontario Water Resources Act.

- TAB L Letter from Ms. Brennain Lloyd on behalf of Northwatch to Brad Ross, Application Processor Ministry of the Environment and Energy, Environmental Assessment and Approvals Branch dated August 25, 2002.
- TAB M Email from Sue Lendrum, Environmental Coordinator, Kidd Mining Division, Falconbridge Ltd., dated September 18<sup>th</sup>, 2002.
- TAB N Emails exchanged between Sue Lendrum, Environmental Coordinator, Kidd Mining Division, Falconbridge Ltd. and Brennain Lloyd on behalf of Northwatch, dated November 29<sup>th</sup> to December 2<sup>nd</sup> 2002.
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- TAB R Residents Against Company Pollution Inc., RE 20 C.E.L.R (N.S.) 97 (Ont. Env. App. Bd) at p. 114.
- TAB S Water Management Policies and Guidelines, Preamble and Section 1.4.
- TAB T Environmental Protection Act, Chapter E.19, R..S.O. 1990, E -14 as amended, section 1, section 3.
- TAB U Statement by Dr. Dave Chambers, Center for Science in Public Participation, dated September 13<sup>th</sup>, 2003.
- TAB V Letter of Opinion from Amy Crook, Water Quality Director, Center for Science in Public Participation, dated September 13, 2003.
- TAB W Profile and status summaries for Lake Sturgeon.
- TAB X Internal MNR emails accessed through a Freedom of Information Request by the Federation of Ontario Naturalists, including emails dated March 12, 2003 and April 14<sup>th</sup> 2003 from Charles Hendry to Mike Bernier
- TAB Y Technical Document - Acid Mine Drainage Prediction, U.S. Environmental, Protection Agency, Office of Solid Waste, Special Waste Branch, December 1994, Section One
- TAB Z Montcalm Project Closure Plan, AMEC Earth & Environmental Limited, July 2002, Sections 5.1 and 5.2